

Appln. No. 10/500,788  
Amendment dated July 17, 2006  
Reply to Office Action of May 8, 2006

REMARKS/ARGUMENTS

Reconsideration of the present application, as amended, is respectfully requested.

The May 8, 2006 Office Action and the Examiner's comments have been carefully considered. In response, claims are cancelled, amended, and added, and remarks are set forth below in a sincere effort to place the present application in form for allowance. The amendments are supported by the application as originally filed. Therefore, no new matter is added.

REJECTION UNDER 35 USC 112

In the Office Action claims 1-15 and 20-26 are rejected under the second paragraph of 35 USC 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. In response, claims are amended to more clearly comply with the requirements of the second paragraph of 35 USC 112.

In view of the amendment of the claims, reconsideration and withdrawal of the rejection of claims 1-15 and 20-26 are respectfully requested.

Appln. No. 10/500,788  
Amendment dated July 17, 2006  
Reply to Office Action of May 8, 2006

PRIOR ART REJECTIONS

In the Office Action, claims 1-15 and 20-26 are rejected under 35 USC 103 as being unpatentable over USP 5,996,529 (Sissom et al.) in view of USP 6,363,883 (Birk) and USP 6,111,508 (Ensor et al.).

The present claimed invention as defined by claim 1 is directed to a system for identifying a ruminant being milked, and as particularly stated in the present application, a small ruminant. As explained on page 2 of the present application, the prior art identification systems are adequate for large ruminants such as cows. Such large animals are typically placed in milking stalls which are separated from each other such that the identification data signals transmitted by a particular ruminant can be read by the antenna present on the wall of the milking stall without interference from neighboring stalls. Contrary to the system used for large ruminants, small ruminants such as goats and sheep are not generally milked in individual milking stalls, but are instead crowded together more or less next to one another during the milking operation. As a result, signals from identification transponders of the closely positioned animals may interfere with each other, making identification of the individual animals difficult (see page 2, line 16 - page 3, line 7 of the present application).

Appln. No. 10/500,788  
Amendment dated July 17, 2006  
Reply to Office Action of May 8, 2006

The system defined by claim 1 includes a transmitter selectively attachable to a hind part of the ruminant and transmitting a predefined signal identifying the ruminant to which the transmitter is attached, and a teat cup positionable on a teat of the ruminant being milked having an antenna affixed thereto. The antenna receives the predefined signal from the transmitter and provides the signal by a receiver device to a processor for interpreting the predefined signal, thereby identifying the ruminant being milked.

As a result of the present invention, a system for accurate identification of a ruminant being milked which can be utilized when the ruminants are not placed in milking stalls, but are milked one next to another, is provided. This result is achieved due to the unique configuration of the transmitter and teat cup having the antenna affixed thereto.

In rejecting claims 1-15 and 20-26, the Examiner primarily relies upon Sissom et al. and states that Ensor et al. teach a transmitter attached to a hind part, and points to column 3, lines 13-17 for support. Column 3, lines 13-17 of Ensor et al. read as follows:

In a preferred embodiment of the invention, the identification device is attached to the leg of an animal by a strap. For example, a strap may be attached to the identification device, which is then tied, stapled, glued or fastened with VELCRO™ around the leg of an animal.

Appln. No. 10/500,788  
Amendment dated July 17, 2006  
Reply to Office Action of May 8, 2006

Ensor et al. do not teach attaching the identification device to a hind part as recited in claim 1. Instead, Ensor et al. teach attachment to the leg of an animal, which includes front legs as well as hind legs. Attachment to front legs of a ruminant would not function effectively in the present invention because there is a greater distance between the teats of the ruminant and the front leg as compared to the distance between the teats and the hind legs. Placement of the transmitter on a hind part of the ruminant is critical and enables the transmitter to transmit a lower power identification signal which will only be received by the corresponding antenna on the teat cup being used for that animal, and will not be picked up by an antenna of a proximately positioned ruminant.

In the Office Action the Examiner also contends that Birk is in the same field of endeavor as the present invention and Sissom et al. and Ensor et al.

Initially, Applicant respectfully states that Birk is not in the same field of endeavor as Applicants' invention and the other cited references. Birk is not directed to animal identification, but is instead directed to an apparatus for automatically performing an animal-related operation. Birk is not at all directed to animal identification.

Appln. No. 10/500,788  
Amendment dated July 17, 2006  
Reply to Office Action of May 8, 2006

Birk teaches placement of a camera on a robot arm which is utilized to couple a teat cup to a teat of a cow. Contrary to the Examiner's assertion that the camera and light source are affixed to the teat cup of Birk, the light source (6) and camera (8) are clearly contained on the robot arm (4), and not on the teat cup (7). Since after the teat cup is secured to the teat of the ruminant, the robot arm is returned to its original position, the camera can be equated to the prior art antenna which was secured to a wall of a milking stall, and not secured to the teat cup.

Moreover, the Examiner's indication that the teaching of a camera is similar to an antenna because the camera sends a signal back to the computer is not entirely accurate. The use of a camera is not equivalent to an antenna, because the camera does not receive information from a remote device, but instead performs its operation and sends a signal to the computer. In contrast, the antenna interacts with the transmitter and awaits receipt of the pre-defined signal from the transmitter and then provides a signal to the computer.

In view of the foregoing, it appears that the Examiner has overstated what is taught by Birk.

Based strictly on hindsight, which improperly takes into account the teachings set forth in Applicants' disclosure, the

Appln. No. 10/500,788  
Amendment dated July 17, 2006  
Reply to Office Action of May 8, 2006

Examiner has artificially and with no specific support rejected the claims based upon the combined teachings of Sissom et al., Ensor et al., and Birk.

The question is whether the specific combination of references and the particular way of modifying the acknowledged prior art as proposed by the Examiner would have been obvious to one of ordinary skill in the art at the time the invention was made based upon the teachings thereof. As explained above, the answer must be that it would not have been obvious to one of ordinary skill in the art because the only way such a combination and modification could have been made is by improperly utilizing hindsight based on the present disclosure. It is well settled that

To support the conclusion that the claimed combination is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed combination or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references. Ex parte Clapp, 227 USPQ 972 (BPAI 1985).

Since the Examiner has not presented a convincing line of reasoning as to why an artisan would have found the claimed invention to have been obvious in light of the teachings of the references, the obviousness rejection cannot be maintained.

Appln. No. 10/500,788  
Amendment dated July 17, 2006  
Reply to Office Action of May 8, 2006

Even further, the Examiner is respectfully advised that not only do the cited references not teach the features of the present claimed invention, there is no motivation to even combine the prior art references. The Examiner's only motivation for combining the references is that "one of ordinary skill in the art" would have recognized the possibility of modifying one prior art reference in view of the other. The Examiner is respectfully advised that the Federal Circuit has held that

To prevent the use of hindsight based on the invention to defeat patentability of the invention, this Court requires the Examiner to show a motivation to combine the references that create the case of obviousness. In other words, the Examiner must show reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the same manner claimed. In re Rouffet, 47 USPQ2d 1453 (CAFC 1998).

In In re Rouffet, the references were in the same field of endeavor as the invention. However, the CAFC still held that since a motivation to combine the references was absent (that is, "what specific understanding or technical principle...would have suggested the combination, for example, the nature of the problem to be solved, the teachings of the prior art, and the knowledge of persons of ordinary skill in the art), which is also lacking in the present application, a prima facie case of obviousness cannot be maintained without specifically stating the motivation

Appln. No. 10/500,788  
Amendment dated July 17, 2006  
Reply to Office Action of May 8, 2006

to combine. See also, In re Dembiczak, 50 USPQ2d 1614 (CAFC 1999).

In view of the foregoing, independent claim 1 and method claim 20 are patentable over the cited references under 35 USC 102 as well as 35 USC 103.

Claims 2-15 and 21-26 are either directly or indirectly dependent on claims 1 or 20 and are patentable over the cited references in view of their dependence on claims 1 or 20, and because the references do not disclose, teach or suggest each of the limitations set forth in the dependent claims.

Withdrawn claims 16-19 have been cancelled from the present application and new claims 27-30 have been added. Claims 27-30 are dependent on claim 1 and further define and limit the features set forth in claim 1. Claims 27-30 are patentable over the cited references in view of their dependence on claim 1 and because the references do not disclose, teach or suggest each of the limitations set forth in claims 27-30.

It is respectfully believed that no additional fees are due for the presentation of claims 27-30 in view of the cancellation of claims 16-19. However, if any additional fees are due, please charge our Deposit Account No. 06-1378 for such sum.



Appln. No. 10/500,788  
Amendment dated July 17, 2006  
Reply to Office Action of May 8, 2006


\* \* \* \* \*

Entry of this Amendment, allowance of the claims and the passing of this application to issue are respectfully solicited.

If the Examiner disagrees with any of the foregoing, the Examiner is respectfully requested to point out where there is support for a contrary view.

If the Examiner has any comments, questions, objections or recommendations, the Examiner is invited to telephone the undersigned at the telephone number given below for prompt action.

Respectfully submitted,

  
Robert P. Michal  
Reg. No. 35,614

Frishauf, Holtz, Goodman & Chick, P.C.  
220 Fifth Avenue  
New York, New York 10001-7708  
Tel. (212) 319-4900  
Fax (212) 319-5101  
RPM/ms